IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4651 OF 2005
IN
CRIMINAL APPEAL NO. 679 OF 2005

Shri.Anand Naryan Naik ..Applicant

Vs.

The State of Maharashtra ..Respondent

....
Mr.S.R.Chitnis for Mr.P.B.Naiknaware for applicant
Mr.V.B.Konde-Deshmukh A.P.P. for Respondent-State
....

CORAM: SMT. V.K. TAHILRAMANI, J.
DATE OF RESERVING THE ORDER : 09.08.2005
DATE OF PRONOUNCING THE ORDER : 17.08.2005

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant has been convicted under Sections 498-A and 306 of IPC by the learned Sessions Judge, Gr.Bombay in Sessions Case No.982 of 1997. Under Section 306 of IPC, a sentence of 7 years R.I. has

been imposed on the applicant. The applicant is seeking bail.

3. It is the prosecution case that the applicant was the husband of Neelam and that he mentally and physically illtreated and harassed her. On account of this Neelam set hereof on fire on 2.10.1996 late in the night.

4. Mr.Chitnis, the learned counsel for the applicant has submitted that the complainant P.W.1 Gangaram Jadhav who is the father of Neelam Naik has not supported the prosecution. It is true that Gangaram Jadhav has not supported the prosecution, however, I find that there is enough evidence on record to show that the applicant ill-treated and harassed his wife Neelam, due to which she committed suicide. The said evidence is two dying declarations of the deceased i.e. Exhs. 18 and 23 and evidence of P.W.3 Sudam Padwal. Mr.Chitnis has further submitted that the two dying declarations i.e. Exhibits-18 and 23 cannot be relied upon. Exhibit-18 has been recorded by the S.E.M.i.e. P.W.4 Mr.Patil and Exh.23 has been recorded by

P.W.6 P.I. Anil Walzade. Mr.Chitnis, has submitted that there is no date and time mentioned on the dying declaration Exh.18. Moreover, one Dr.Raj has put endorsement on the said dying declaration regarding the fitness of the patient to give her statement. The said Doctor has not been examined. He has submitted that in such case, the dying declaration Exh.18 cannot be relied upon. He has further submitted that the dying declaration Exh.23 which is recorded by P.W.6 P.I.Anil Walzade also cannot be relied upon. It may be stated here that a copy of this dying declaration Exh.23 was not produced for perusal of the Court.

5. As far as the dying declaration Exh.18 is concerned, no doubt, the S.E.M. has not put the date or time on the said dying declaration, however, below the endorsement of the Doctor, the date 3.10.96 is found. The name of the patient is clearly shown in the dying declaration i.e. Neelam Anand Naik. In relation to this dying declaration, it would be necessary to see the evidence of P.W.5 Dr.Vikas Deshmukh. Dr.Deshmukh has stated that on 3.10.1996 he was on duty. At that time, Neelam

Anand Naik was admitted in the burns ward at 1.30 a.m. The police and the S.E.M. consulted him to know as to whether the patient was in a position to make statement. He told them that the patient was in a position to make a statement. Thereafter, the dying declaration came to be recorded by S.E.M. and the police. When his evidence was recorded the dying declaration Exh.18 recorded by the S.E.M. was shown to Dr.Deshmukh. Dr.Deshmukh stated that it bore the signature of his junior Doctor i.e. Dr.Raj. He has further stated that he has personal knowledge as to the time when the endorsement on the dying declaration was made. Dr.Deshmukh has further stated that Dr.Raj put endorsement and signature on Exh.18 after consulting with him. Dr.Deshmukh has stated that he was present when Dr.Raj put endorsement on the said document. Dr.Deshmukh has further stated that as per the routine practice in the presence of senior Doctor, junior Doctor has to make endorsement on the dying declaration and therefore, in this case, his junior Doctor i.e. Dr.Raj made endorsement. Thus in view of the evidence of P.W.5 Dr.Deshmukh, even if Dr.Raj who put the endorsement on the dying

declaration, was not examined, in my view, it would not affect the prosecution case. From the evidence of Dr.Deshmukh, it is seen that he has examined the patient Neelam Naik on 3.10.1996 at about 3 a.m. He found her to be in a fit state to give her statement and as per the consultation with him, his junior Doctor put the endorsement on the dying declaration. Thus, the fact of dying declaration of Neelam Naik being recorded on 3.10.1996 at about 3 a.m. is clearly made out from the evidence of P.W.5 Dr.Deshmukh. Thus, even though, the S.E.M. may have forgotten to put the date and time on the dying declaration Exh.18, looking to the evidence on record, it would not raise any doubt about the genuineness of the dying declaration Exh.18.

6. In relation to dying declaration Exhibit-18, it is further submitted that there is overwriting in the said dying declaration and the said overwriting has not been initialled.

7. In respect of overwriting, it is seen that overwriting is in respect of period when Neelam got married to the applicant. There is no overwriting

in any portion of the dying declaration wherein Neelam has stated that her husband used to illtreat and harass her and that he used to drink liquor and used to cause her mental and physical torture. There is also no overwriting in the portion where Neelam has stated that on account of illtreatment and harassment at the hands of her husband, she poured kerosene on her body and set herself on fire. Thus, looking to the evidence on record I find that this dying declaration can be relied upon.

8. Besides the dying declaration Exh.18 which has been recorded by the S.E.M. P.W.4 Mr.Patil there is one another dying declaration on record i.e. Exh.23 which has been recorded by P.W.6 P.I. Anil Walzade. It is well settled that the conviction can be based on the evidence of a dying declaration recorded by the police officer. In respect of dying declaration Exh.23, no arguments have been advanced that the said dying declaration does not bear the date and time. The evidence of P.W.4 Mr.Patil, P.W.5 Dr.Deshmukh and P.W.6 P.I.Walzade clearly shows that the deceased was in a position

to give her statement. In the present case, there is not one but two dying declarations. In both the dying declarations, the deceased has implicated the applicant. From the dying declarations, it is clear that on account of the constant illtreatment and harassment by the applicant, Neelam poured kerosene on herself and set her on fire. Thus, there is sufficient material on record to implicate the present applicant.

9. Besides the dying declarations, there is also evidence of witness P.W.3 Sudam Padwal. Sudam Padwal has stated that he knows that Neelam and her husband used to quarrel. He has stated that her husband used to suspect her chastity. Neelam told him that her husband used to beat her raising doubt about her character.

10. The evidence on record clearly brings out the complicity of the applicant in the said crime. Hence, I am not inclined to grant bail to the applicant even though he was on bail prior to conviction.

11. Application is rejected.

[SMT.V.K.TAHILRAMANI,J.]